

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

CATHERINE JEAN PINTO,

Defendant and Appellant.

2d Crim. No. B173838  
(Super. Ct. No. LA043185)  
(Los Angeles County)

Catherine Jean Pinto appeals the sentence imposed after she pleaded nolo contendere to grand theft by embezzlement (count 1) and grand theft of personal property (count 2). (Pen. Code, § 487, subd. (a).)<sup>1</sup> She also admitted that her total theft exceeded \$1 million. (§ 12022.6, subd. (a)(3).) The trial court sentenced her to five years eight months in prison, consisting of a two-year middle term on count 1, three years for the section 12022.6, subdivision (a)(3) enhancement, and eight months (one-third of the middle term) on count 2. Pinto contends that the sentence on count 2 should have been stayed pursuant to section 654. We affirm.

---

<sup>1</sup> All statutory references are to the Penal Code.

## FACTS<sup>2</sup>

For approximately 30 years, Pinto served as legal secretary and paralegal for attorney Martin Berman. When Berman became a sole practitioner in 1994, Pinto became his bookkeeper as well as secretary. Pinto was entrusted with authority to sign checks on various client and general fund accounts. In 2000, Berman moved to Palm Springs and his office was relocated to Pinto's residence.

In September 2002, Berman discovered that \$225,000 was missing from his client trust account. When he confronted Pinto, Pinto admitted she had stolen money from law firm accounts over a period of several years. She produced hundreds of cancelled checks payable to herself and family members, and a spreadsheet revealing that she had taken well over \$700,000 from Berman's accounts. In total, Pinto wrote more than 600 checks to herself and her family, forged Berman's signature on checks, and falsified accounting records to cover up these activities.

The information alleged two counts. Count 1 alleged grand theft by embezzlement of money in the amount of \$772,689. Count 2 alleged grand theft of personal property in the amount of \$346,555 as compensation for bookkeeping services Pinto did not perform. Both counts alleged that the thefts occurred during the period of December 1995 through May 2002. It was further alleged that, in the commission of the offenses, Pinto took property of a value exceeding \$1 million within the meaning of section 12022.6, subdivision (a)(3), and of a value exceeding \$150,000 within the meaning of section 12022.6, subdivision (a)(2).

## DISCUSSION

Pinto contends that the imposition of punishment for both the embezzlement and grand theft of personal property offenses is prohibited by section 654.

---

<sup>2</sup> Because Pinto pleaded guilty and waived her right to a preliminary hearing, the facts are based on the probation report, the police investigation report, documents filed by the parties for the sentencing hearing, and testimony of witnesses at the sentencing hearing.

She argues that both offenses were committed during an indivisible course of conduct with a single intent and objective. We disagree.

Section 654 provides that "[a]n act or omission that is punishable in different ways by different provisions of law shall . . . in no case . . . be punished under more than one provision," and precludes multiple punishments for offenses committed as part of an indivisible course of conduct with a single intent and objective. (*People v. Hester* (2000) 22 Cal.4th 290, 294.) But, when offenses are independent of each other, the defendant may be punished separately even though the offenses share common acts or were parts of an otherwise indivisible course of conduct. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208; *People v. Green* (1996) 50 Cal.App.4th 1076, 1084-1085.) If the offenses were committed on different occasions, they may be punished separately because defendant's course of conduct is not "indivisible." (*People v. Beamon* (1973) 8 Cal.3d 625, 639, fn. 11; *People v. Kwok* (1998) 63 Cal.App.4th 1236, 1252-1254; *People v. Felix* (2001) 92 Cal.App.4th 905, 915.) "This is particularly so where the offenses are temporally separated in such a way as to afford the defendant opportunity to reflect and to renew his or her intent before committing the next one, thereby aggravating the violation of public security or policy already undertaken." (*People v. Gaio* (2000) 81 Cal.App.4th 919, 935.)

Although there were several hundred acts of theft in this case, the prosecution chose to aggregate Pinto's criminal acts into two counts. Accordingly, we must evaluate the section 654 issue in terms of the actual offenses for which Pinto was convicted and determine whether separate punishment can be imposed for each of them.

Count 1 consisted of the embezzlements from law firm accounts. Count 2 alleged the theft of compensation for the performance of services that Pinto never performed. The theory of count 2 was that Pinto committed theft by paying herself a salary without performing any material secretarial or bookkeeping services. The prosecutor stated that taking a salary under the false pretense of performing services was a theft in itself. (See *People v. Miller* (2000) 81 Cal.App.4th 1427, 1446 [inducing the

transfer of property by false pretenses is theft].)

The trial court found that the two offenses involved separate legal theories and separate takings and, by inference, that the offenses were not committed as part of an indivisible course of conduct with a single objective. Substantial evidence supported these findings. (*People v. Osband* (1996) 13 Cal.4th 622, 730 [trial court findings on application of section 654 reviewed for substantial evidence].) Each of the offenses consisted of numerous criminal acts over an extended period of time during which Pinto could reflect before deciding to steal again. Also, the evidence supports the conclusion that the offenses had separately formed intents and specific objectives that arose during the years in which the thefts occurred.

Pinto argues that her intent and objective for both offenses were the same because she continued working for Berman only to retain access to his money, and collecting compensation was an essential means to accomplish the embezzlement. We do not dispute that Pinto had to maintain her employment in order to embezzle money from the law firm, but this does not establish a single intent and objective for both offenses. It supports the conclusion that Pinto was carrying out at least two "schemes" and objectives for her criminal activity.

In addition, Pinto appears to be confusing the existence of separate offenses with the criteria to determine the permissibility of separate punishment. Pinto's trial counsel questioned whether count 2 was a viable charge that the prosecution could prove. Pinto's guilty plea, however, admitted that there was evidence to establish all elements of the offense. (*People v. Martin* (1973) 9 Cal.3d 687, 693-694.)

Pinto also contends that she had the single intent and objective of stealing Berman's money in the commission of both offenses, and that both offenses occurred during the same period of time. To use her own words, Pinto's "only objective was to obtain Mr. Berman's money, by whatever means."

Again, we do not dispute that Pinto's overall goal was financial gain, but this characterization of intent and objective is too broad and amorphous to determine the

applicability of section 654. In rejecting "sexual gratification" as a single section 654 intent and objective for multiple sex crimes, the Supreme Court stated that the "[a]ssertion of a sole intent and objective to achieve sexual gratification is akin to an assertion of a desire for wealth as the sole intent and objective in committing a series of separate thefts. To accept such a broad, overriding intent and objective to preclude punishment for otherwise clearly separate offenses would violate the statute's purpose to insure that a defendant's punishment will be commensurate with his culpability." (*People v. Perez* (1979) 23 Cal.3d 545, 552.) We have also concluded that the commission of numerous acts of perjury and welfare fraud with a continuing intent to defraud the government, was "too general an objective to constitute one transaction and preclude punishment for divisible separate offenses." (*People v. Williams* (1980) 106 Cal.App.3d 15, 20.)

The evidence shows that Pinto had multiple specific intents and objectives. She stole to pay her debts and debts of family members, to gamble in the hope of finding a source for repayment of money previously stolen, to enhance her status in her church through substantial charitable contributions, and to induce her employer to continue paying her a salary. We cannot treat these specific motives and objectives as identical or as establishing an indivisible course of conduct.

Pinto also argues that the allegation and admission of the section 12022.6, subdivision (a)(3) enhancement establishes that both offenses were committed with the same intent and objective for purposes of section 654. As Pinto states, the enhancement requires that the \$1 million amount must result from felonies that "arise from a common scheme or plan." (§ 12022.6, subd. (b).)

There is some resemblance between the requirement of the enhancement and the section 654 "indivisible course of conduct" standard. But, there is no authority holding that a "common scheme or plan" for purposes of section 12022.6 is the same as the narrower requirement of an "indivisible course of conduct" for purposes of section 654. As we have stated, criminal acts occurring on different occasions may be separately

punished even if they are otherwise part of a course of conduct that could be described as a "scheme or plan." Moreover, the issue in this appeal is limited to the application of section 654, not the scope of an enhancement intended to deter large-scale crime. (See *People v. Crow* (1993) 6 Cal.4th 952, 961.)

The judgment (sentence) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P.J.

COFFEE, J.

Martin L. Herscovitz, Judge  
Superior Court County of Los Angeles

---

Gideon Margolis, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Linda C. Johnson, Supervising Deputy Attorney General, Carl N. Henry, Deputy Attorney General, for Plaintiff and Respondent.